

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Alton M. Chisolm,) C/A No. 4:06-1957-RBH
)
Plaintiff,) OR D E R
)
vs.)
)
State of South Carolina, Attorney General of the State of)
South Carolina, and Stan Burtt, Warden of Lieber)
Correctional Institution,)
)
Defendants.)

)

The Plaintiff, *pro se*, instituted this action pursuant to 28 U.S.C. § 2254 on July 6, 2006. At the time he initiated this lawsuit, he was incarcerated in the SCDC at Lieber Correctional Institution. He is now in the custody of the Charleston County Sheriff.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pretrial handling. The matter is before this Court on the Report and Recommendation of Magistrate Judge Rogers, which was issued on September 11, 2006. After analyzing the issues presented in this case, the Magistrate Judge recommended that this Court dismiss the petition without prejudice without requiring the respondents to file a return on the basis of the petitioner's failure to exhaust his state court remedies. The plaintiff filed objections to the Report on September 21, 2006.

The Magistrate Judge makes only a recommendation to the Court, to which any party may file written objections. The Court is not bound by the recommendation of the Magistrate Judge but, instead, retains responsibility for the final determination. *Mathews v. Weber*, 423 U.S. 261 (1976). The

Court is required to make a *de novo* determination of those portions of the Report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1).

The Court has reviewed the Petition, Report and Recommendation by the Magistrate Judge, the applicable law, and the petitioner's objections. On the basis of the authorities cited by the Magistrate Judge and this Court's review of the record, the Court overrules all objections, adopts the Report of the Magistrate Judge, and incorporates it into this Order by reference.

The Petition is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ R. Bryan Harwell

R. Bryan Harwell

United States District Judge

May 29, 2007
Florence, South Carolina